Single Bench

(3)

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (CG)

W.P. /10 /2005

Single Bench
(other matter).

P.R. No. 05/05
Presented by Shri M.G. Tarnaskar
dated 03-01-05

Petitioner : HARISHANKAR KUMBHKAR
aged about 32 years
S/o Shri Chhotelal Pade
R/o village - Kolihapuri
Tah. & Distt. DURG (CG).

Versus.

Respondents: (1) STATE OF CHHATTISGARH
Through : Principal Secretary
Mining Department Govt.of C.G.
Secretariat D.K.S. Bhawan
RAIPUR (C.G.)

(2) THE COLLECTOR
(Mining Branch)
Through - Mining Officer,
Collectorate, DURG (C.G.)

(3) CHHATTISGARH ENVIRONMENT CONSERVATION BOARD
5/32- Bunglow Bhilai
Tah. & Distt. DURG (C.G.)

(4) DURG RAJNANDGAON GRAMIN BANK
Through : General Manager
Durg Rajnandgaon Gramin Bank
Head Office, Rajnandgaon.

(5) GRAM PANCHAYAT ALBARAS
Through - Secretary
Gram Panchayat Albaras
Tah. & Distt. DURG (CG)

R.W. G. VEERBHAN DURG C.G. India 13/1/98

contd...2

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

(80)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.04 of 2005

Gopal Pade

-Versus-

State of Chhattisgarh and others

Writ Petition No.05 of 2005

Roshanlal Deshmukh

-Versus-

State of Chhattisgarh and others

Writ Petition No.08 of 2005

Santosh Kumar Pade

-Versus-

State of Chhattisgarh and others

Writ Petition No.09 of 2005

Santosh Kumar Pade

-Versus-

State of Chhattisgarh and others

Writ Petition No.10 of 2005

Harishankar Kumbhkar

-Versus-

State of Chhattisgarh and others

POST FOR ORDER ON 18.1.2005

Sd/-
L.C. Bhadoo
Judge

(81)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.04 of 2005

Gopal Pade

- Versus -

State of Chhattisgarh and others

Writ Petition No.05 of 2005

Roshanlal Deshmukh

- Versus -

State of Chhattisgarh and others

Writ Petition No.08 of 2005

Santosh Kumar Pade

- Versus -

State of Chhattisgarh and others

Writ Petition No.09 of 2005

Santosh Kumar Pade

- Versus -

State of Chhattisgarh and others

Writ Petition No.10 of 2005

Harishankar Kumbhkar

- Versus -

State of Chhattisgarh and others

Present: -

Mr. V.G. Tamaskar, Advocate:	For the petitioners.
Mr. Sumesh Bajaj, Dy. Govt. Advocate:	For the State /respondents No.1 & 2.

O R D E R

(Passed on 19th January, 2005)

L.C. BHADOO, J.

1. Writ Petition No.04/2005 (Gopal Pade vs. State of Chhattisgarh and others); Writ Petition No.05/2005 (Roshanlal Deshmukh vs. State of Chhattisgarh and others); Writ Petition No.08/2004

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(Santosh Kumar Pade vs. State of Chhattisgarh and others); Writ Petition No.09/2005 (Santosh Kumar Pade Vs. State of Chhattisgarh and others) & Writ Petition No.10/2005 (Harishankar Kumbhkar Vs. State of C.G. and others) are being disposed of by this common order, as in all these petitions a common questions of fact and law is involved.

2. By these writ petitions the petitioners have questioned the legality, propriety and correctness of the orders dated 27.12.2004 purported to have been passed under Section 247 (5) of the C.G. Land Revenue Code, 1959 (hereinafter shall be referred as ' the Code, 1959) by respondent No.2- Collector (Mining Branch) whereby each of the petitioners has been prohibited from carrying on the business of manufacturing of bricks in the land mentioned in the impugned orders.

3. The petitioners' cases in these writ petitions are that they were granted mining lease by the Collector (Mining Branch) vide order Annexure P-1, said mining lease was granted to them for the purpose of manufacturing of bricks on a private land belonging to the family of the petitioners and for which each of the petitioners obtained the consent letter from C.G. Environment Conservation Board. The petitioners were also granted Tax Payer's Identification Number (TIN) and the certificate of registration was also issued by the General Manager, District Trade & Industries Centre, Durg. As the area falls under the jurisdiction of Gram Panchayat Albaras, therefore, each of the petitioners was granted permission by the said Gram Panchayat for manufacturing of bricks under the

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resolution passed by the said Gram Panchayat. For running the business of manufacturing of bricks each of the petitioners has obtained loan from the Bank. However, the Mining Branch of District Collector, Durg issued a show cause notice to each of the petitioners on 1.10.2004 of which each of the petitioners has filed reply, but the Collector (Mining Branch) without considering the reply of the petitioners probably under political influence restrained the petitioners from continuing their business of manufacturing of bricks in exercise of powers under Section 247(5) of the Code, 1959. Therefore, it has been prayed that the impugned orders be quashed.

4. In writ petition No.04/2005 return on behalf of respondent No.1 & 2 has been filed with an application that same may be adopted as return of other writ petitions also. In the return, the grant of working permission under C.G. Mines & Minerals Rules, 1996, issuance of show cause notice and filing of reply by each of the petitioners have been admitted. It has been mentioned in the return that respondent No.2 has never received any complaint of the workers, the impugned order has been passed as an interim measure, as law and order situation had arisen in the area and the Gram Panchayat Albaras had passed the resolution dated 27.9.2004 that the bricklin operating in the Gram Panchayat area be closed on account of serious irregularities. Respondent No.2 acted upon the Gram Panchayat resolution directed the Mining Inspector, Naib Tehsildar, Mining Officer and Mining Surveyor to immediately enquire into the matter and submit their reports. All these officers have submitted their reports on 29.9.2004 (Annexure R1-2) and

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based on that respondent No.2 issued show cause notice on 01.10.2004 to each of the petitioners. Respondent No.2 further constituted a committee of six officers and directed them to demarcate the lease area of each of the petitioners and to submit their report. Naib Tehsildar submitted his report vide Annexure R1-4 and in its report Naib Tehsildar found that there was certain anomaly and irregularities with regard to the terms and conditions agreed by each of the petitioners while entering into the agreement along with the respondents. Petitioners were found guilty for illegal mining outside the area granted to them, therefore, proceedings were initiated by the Upper Collector under Section 247 (7) of the Code, 1959, same is pending adjudication, final order on the same is yet to be passed and the impugned order has been passed as an interim measure.

5. I have heard learned counsel for the petitioners Mr. V.G. Tamaskar & Mr. Sumesh Bajaj, Deputy Government Advocate for the State/ respondent No.1 & 2.

6. Learned counsel for the petitioners Mr. Tamaskar argued that in the present cases provisions of Section 247 (5) of the Code, 1959 are not applicable, as the mining lease was granted to the petitioners under C.G. Mines & Mineral Rules, 1996, show cause notice was issued under these Rules and reply of the same was also filed, therefore, respondent No.2 could have passed the order under these rules. As such, the impugned orders are wholly without jurisdiction, writ petitions are maintainable and impugned orders are liable to be quashed.

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7. On the other hand, Mr. Bajaj submitted that the orders in question have been passed as an interim measure and final orders are yet to be passed.

8. Having heard learned counsel for the parties, I have perused the record. Perusal of show cause notice shows that same was issued under C.G. Mines & Minerals Rules, 1996 and the petitioners were asked to show cause about the violation of sub-rules 11, 12 & 13 of Rule 30 and Rules 44, 45 & 46, but abruptly the impugned orders have been passed under Section 247 (5) of the Code, 1959. Perusal of C.G. Mines & Minerals Rules, 1996 shows that the Collector- Mining Branch can impose the penalty, if any violation is found, but in the present case the Collector, Mining without considering the Mining Rules all of a sudden passed the impugned orders under Section 247(5) of the Code, 1959 asking the petitioners to stop manufacturing of bricks and mining operations. Therefore, impugned orders are not sustainable at law.

9. Sub-section (5) of Section 247 of the Code, 1959 envisages that *"no assignee of the Government shall enter on or occupy the surface of any land without the previous sanction of the Collector, and unless the compensation has been determined and tendered to the persons whose rights are infringed'.* Sub-section (4) envisages that *" if, in the exercise of the rights of any person are infringed by the occupation or disturbance of the surface of land, the Government or its assignee shall pay to such persons compensation for such infringement...."*. Learned Deputy Government Advocate was not able to point out that how these provisions are applicable in the

present cases. It is an admitted position that petitioner Gopal Pade's lease is upto 3.1.2014, Harishankar Kumbhkar's lease is upto 17.12.2013, Santosh Kumar Pade's one lease is upto 13.3.2007 in respect of land Khasra No. 719(P) and other lease in respect of Khasra Nos.709/12 & 710 is upto 23.09.2006 and Roshanlal Deshmukh's lease is upto 13.12.2008. Therefore, in all the cases petitioners are working under the valid lease and they have also obtained necessary clearance certificates from all other concerned departments.

10. In the result, I am of the opinion that the impugned orders dated 27.12.2004 are not sustainable at law, same are liable to be quashed, therefore, they are hereby quashed. However, respondent No.2 is not precluded from proceeding with the matter in accordance with the relevant rules and law.

11. With the aforesaid, the petitions and M.W.Ps are disposed of.

Sd/-
L.C. Bhadoo
Judge

Roshan/-